IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 116 OF 2003.

Shri Dattatray Raghunath
Jog, r/o Kadtari, Sonal,
Sattari, Valpoi. ... Petitioner.

Versus

1. The Goa State Agricultural
   Marketing Board by its
   Chairman, Arlem, Margao.
2. Mr. S.B. Walke, Mapusa
   Market Sub-Yard, Near
   Kadamba Bus Stand, Mapusa.
3. Mr. Manoj S. Walke, Member,
   Goa State Agricultural
   Marketing Board, Arlem-Raia,
   Margao. ... Respondents.

Mr. A.F. Diniz, Advocate for the Petitioner.

Mr. N.K. Sawaikar, Additional Government Advocate for the Respondent No. 1.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Respondents 2 and 3.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 23rd June 2003.

ORAL JUDGMENT (PER REBELLO, J.)

Rule. Respondents waive service. Heard forthwith.

2. The present petition is by an agriculturist who, it is averred, brings his agricultural produce viz., cashewnuts and betelnuts to the Mapusa Market constituted under Section 5 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. It is the petitioner's case that the market is utilized

in accordance with the provisions of the Act, Rules and Bye-laws framed thereunder. The market yard and sub-yard, it is averred, are for the purpose of marketing agricultural products under the Act. Under Section 6, no person can use the market area for marketing agricultural produce otherwise than in accordance with a licence. Reference is made to various other provisions of the Act, Rules and Bye-laws. It is not necessary to refer to the control which the State Government exercises over the Marketing Board. The averments are set out in paragraph 4 of the petition. It is then set out that by Resolution of January 2003, the respondent no. 1 had permitted respondent no. 2 to carry out repairs to a shed allotted to him to commence an industrial/manufacturing unit therein, viz., a packing unit. It is contended that this has been done despite objections by two of the Board Members, who expressed their opinion that industrial units should not be permitted within the market area. It is further pointed out that respondent no. 3 is the brother of respondent no. 2 who, not only participated in the meeting where the question of grant of permission was discussed, but actually canvassed in favour of his brother. It is further set out that the marketing area is designed to operate as an area for marketing of the notified agricultural produce and cannot be converted to an industrial or manufacturing area wherein

manufacturing units are permitted to be started. The Resolution granted in favour of the respondent no. 2 it is, therefore, contended is ultra vires the powers conferred upon respondent no. 1 and contrary to the reliefs as prayed for.

On behalf of the respondent no. 1, the Secretary has filed an affidavit. Some technical objections have been averted, which need not be gone into at this stage. It is pointed out that respondent no. 1 received an application, dated 5th May 2000, from M/s. S.B. Walke for leasing three new cattle sheds in the Mapusa Market sub-yard for the purpose of producing, procuring and processing milk and milk products in the cattle shed itself. Since the sheds were constructed in the year 1995-96, the three sheds were vacant and were not used as there were no arrival of cattle. Considering this fact and also that the old three cattle shed blocks were also not being used for cattle, the three cattle sheds were allotted to the respondent no. 2 by letter dated 7th July 2000. Possession of one shed was taken on 16th August 2000. Subsequent thereof two more cattle sheds have also been let out. By letters dated 16th July 2001 and 14th August 2001 the respondent no. 2 approached the respondent no. 1 for carrying out repairs as set out in the averments of paragraph 4 of the reply. That permission was granted in terms and

conditions as contained in the letter dated 25th September 2001 and leave and licence agreement, dated 20th July 2001. It is also averred that milk and milk products have been notified in the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 as extended to the State of Goa.

3. Respondent no. 2 has filed his affidavit. The various objections raised by the petitioner have been averted to. In paragraph 5 it is, however, set out that permission was granted for carrying out business in the notified commodity milk, that is, procuring, processing storing, packing and marketing of milk and milk products. Reference is made to various licences obtained from various authorities for carrying out the activity. It is then set out that in the shed, milk is procured and processed by way of pasteurization and preparation of different milk products like curd, lassi, flavoured milk, etc.. Reference is made to three fumigation chambers in the yard which are used for the purpose of ripening of bananas by using chemical process/techniques. It is also pointed out that coconut peeling machines have been set up in the yard. It is further urged that insofar as the market yard is concerned, engaging in dairy and dairy products are permissible and acceptable. It is, therefore, contended that the petition should be dismissed.

The petitioner has filed a rejoinder wherein it is reiterated that the activity sought to be set up by the respondent no. 2 is not only not permissible but it will cause pollution. It is not necessary to advert to this latter part of the contention as the respondent no. 2 in his affidavit in reply has set out that he has obtained the necessary permission under the Water (Contravention and Control of Pollution) Act and the Air (Contravention and Control of Pollution) Act.

4. A perusal of the provision of the Act would indicate that under Section 7, licence can be granted for marketing of agricultural produce or for operating therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of agricultural produce. Under the Rules framed, more specifically Rule 7 any person desiring to operate in any market area as a processor, weighman, measurer, surveyor, counter, husker, warehouseman or in any other capacity in relation to the marketing of any declared agricultural produce shall make an application in writing in the form prescribed by the State Marketing Officer or the Bye-laws for the grant of a licence or renewal thereof and the licence can be granted. A combined reading of the Act and the Rules framed thereunder would, therefore, show that processing is a

permissible activity. Operations for processing can be carried out physically, for example, husking of coconuts, as long as there is a co-relation between the product brought in and the processing. Similarly by mechanical means as in the case of fumigation of bananas. In the instant case it would, therefore, be permissible activity to process the milk brought in for purchase or sale. It was sought to be contended that the respondent no. 2 is setting up a manufacturing unit to manufacture satchets for the purpose of packing milk and milk products. Such a specific averment was not specifically raised in the petition. However, on behalf of the respondent no. 2, the learned counsel for the respondent no. 2, after taking oral instructions from the respondent no. 2, who is present, makes a specific statement that respondent no. 2 is not manufacturing satchets in the yard and on the contrary is bringing satchets manufactured outside the yard and is only using the satchets for the purpose of packing the milk and milk products. Statement made on behalf of the respondent no. 2, through his counsel, is accepted.

5. Once milk and milk products are commodities in respect of which activity can be carried on in the market yard, processing and packing of the same would be an activity incidental or ancillary to the same. In that light of the matter we do not see any merit in the

petition.

Rule discharged, there shall be no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

ed’s.